Q. And when was the payment made on that, Mr. Wolf? A. I wish you would refresh my recollection from the check that is in evidence. It was in '43, I think; I am not too sure of that.

Mr. Fennelly: Let me have the other check, too, on West End.

Q. I show you Government's Exhibit 297. Does that refresh your recollection? A. Yes.

Q. Now, that pertained to some old matter going back to 1931, didn't it? A. Well, it went back a long time, many, many years. It was paid in '48, I see.

Q. And is the same true as to the payment in connection (1329) with 585 West End Avenue? A. Yes.

Mr. Fennelly: Have you the check?

Mr. MacMahon: There is no check, Mr. Fennelly.

The Witness: Four hundred and some odd dollars, I think.

Q. And that also went back a long, long time, didn't it, to the early '30s? A. Yes; these matters went back a long time, many years.

Mr. Fennelly: Could I have, please, Government's Exhibits 2, 3 and 4, too. You had better let me have 1, 2, 3, 4.

(Mr. Pierpoint hands to Mr. Fennelly.)

Q. Mr. Wolf, I believe you testified yesterday, in response to a question of Mr. MacMahon, that all of the contributions had been taken in Mr. Costello's income tax returns for these years. Now, I refer you to Government's

Exhibit 4, which is the income tax return for 1946 for Mr. Costello; and isn't it a fact that his contributions were greater than the amount that he could take as a deduction for that year? I call your attention to the exhibit, schedule, limited to 15 per cent of his— A. Yes, yes, there is a statement there that the contributions are limited to 15 per cent of his income.

Q. And his contributions were larger than the amount he could take as a deduction, isn't that right? (1330) A. Well, he listed his contributions but only took—he took a lesser amount.

Q. That is right. A. He listed $6,338.50 but could only take $5,257.40 because of the limitation in the tax law.

Q. Now, I believe you testified yesterday that in certain years Mrs. Costello had no income. Now, in the year 1948, I think that was one of the years, she did have a loss, capital loss, as a matter of fact, didn't she? I refer you to Government's Exhibit 2 (handing). A. Yes, I only testified about income.

Q. And you were not testifying about capital assets of Mrs. Costello? A. I was not asked that question by the—

Q. And on the subject of income you had been speaking about that in connection with the taxes, had you not? A. In connection with a letter which I was to write to the State Tax Department.

Q. In connection with taxes? A. In connection with taxes, with information they wanted in connection with taxes.

The Court: Well, it was for the purpose of taxes, wasn't it, for the purpose of—

The Witness: Ultimately—

The Court: —taking care of something that had (1331) to do with taxes?

The Witness: It had to do with taxes.
The Court: All right.
Mr. Fennelly: That is all.

Redirect Examination by Mr. MacMahon:

Q. Mr. Wolf, yesterday I asked you a question which I will now read:

"Now, Mr. Wolf, as to the fees that you received from October 1943 through December 31, 1949, did you receive all of those fees from Frank Costello?"

And you answered, "Yes."

And I asked you if you received any from Mrs. Costello and the transcript says "One," I think that is a typographical error; your answer was "None," was it not? A. None whatsoever.

Q. N-o-n-e? A. During those years.

Q. Yes. And, Mr. Wolf, the full $52,500 investment in 79 Wall Street was made in the year 1944, is that right, sir? A. That is right.

Q. Now, referring to the miscellaneous income for the years 1948 and 1949 shown on Government's Exhibits 2 and 1, respectively, did Mr. Costello state to you that that income—did he state the source of the income to you?

Mr. Fennelly: Just a minute. I object to that (1332) as a privileged communication between attorney and client.

The Court: Overruled.

A. Where is this?

Q. On the 1948 return, $9,500. A. He did.

Q. And the source was what? A. From wages, the net result of wages that he made for the year.

George Wolf—for Government—Recross
John G. Brown—for Government—Direct

Q. And was the same thing true of the gambling—of the miscellaneous income reported on the 1949 return? A. Yes.

Mr. MacMahon: That is all, Mr. Wolf.

Recross Examination by Mr. Fennelly:

Q. And that information he gave you from a compilation of figures that he had with him? A. Yes.

The Court: No further questions? Very well. You may step down.

(Witness excused.)

Mr. Christy: The Government calls John Gordon Brown.

JOHN GORDON BROWN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Brown, where do you live? (1333) A. 853 East 27th Street, Paterson, New Jersey.

Q. Where are you employed? A. By Tiffany & Company.

Q. Where is Tiffany & Company? A. Fifth Avenue and 57th Street, New York City.

Q. How long have you been with Tiffany, Mr. Brown? A. 26 years.

Q. Are you the credit man there? A. I am one of the credit men.

Q. Do you know if Tiffany had some transactions with Mrs. Costello? A. They did.

Q. From the records? A. They did, sir.

Q. Have you those records? A. I do, (handing papers to Mr. Christy).

Mr. Christy: I ask to have these marked for identification.

(Marked Government's Exhibits 306 and 306-A for identification.)

Q. Mr. Brown, I show you Government's Exhibits 306 and 306-A and I ask you if those are ledger sheets of the account of Mrs. Loretta Costello with Tiffany & Company? A. They are, sir.

Q. Does the first sheet, Government's Exhibit 306 for identification, indicate the year 1946? A. It does.

(1334) Q. And on the back of that sheet 1949? A. It does, sir.

Q. Are these exhibits ledger sheets kept in the regular course of Tiffany's business? A. Yes, sir.

Mr. Christy: Your Honor, the Government offers Government's Exhibits 306 and 306-A for identification in evidence.

The Court: I assume you will want to substitute photostats?

Mr. Christy: Yes. May we, your Honor?

The Court: You may do so.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

John G. Brown—for Government—Cross

(Government's Exhibits 306 and 306-A for identification received in evidence.)

Q. Mr. Brown, these exhibits, Government's Exhibits 306 and 306-A, show the payments on this account, do they not? A. Yes, sir, they do.

Q. Have you computed the annual payments from that account in the years 1946, '47 and '49? A. I have, sir.

Q. Will you tell us how much was paid in 1946, sir? A. $761.76.

Q. $761.76? A. That is right, sir.

(1335) Q. 1947? A. $94.86.

Q. And in 1949? A. $230.79.

Mr. Christy: No further questions.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Mr. Fennelly: That is all.

Mr. Christy: Thank you, Mr. Brown.

The Witness: Is that all, sir?

The Court: Yes.

(Witness excused.)

Mr. Christy: The Government calls James Kelly.

James Kelly—for Government—Direct

JAMES KELLY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Kelly, where do you live? A. 17 Hunter Lane, Hicksville.

Q. Where are you employed, sir? A. Airflow Refrigeration, Incorporated.

Q. Where is that? A. 3702 27th Street, Long Island City.

Q. Are you the president of Airflow Refrigeration? A. I am.

(1336) Q. Will you tell us, briefly, what the business of Airflow Refrigeration is? A. Our business is to make installations and service air-conditioners for dealers, appliance dealers—primarily for appliance dealers.

Q. Has Airflow Refrigeration ever done any work for Mrs. Costello of 115 Central Park West? A. Yes, sir.

Q. Do you have some records of that work? A. Yes, sir.

Q. May I have them, sir? A. (Handing papers to Mr. Christy).

(Marked Government's Exhibits 307 and 307-A for identification.)

Q. Mr. Kelly, you have Government's Exhibits 307 and 307-A for identification. Will you tell us what they are? A. These are work orders made by the mechanic.

Q. For work done at— A. For work done at—

Q. —Mrs. Costello's at 115 Central Park West? A. Mrs. Costello's at—that is right.

Q. And what is the date on 307? A. 7/25/49.

Q. And on 307-A? A. 7/25/49.

Q. Are these work orders records kept by Airflow in the regular course of its business? A. Yes.

(1337) Q. And it is the regular course of business to keep these work orders? A. Yes, sir.

Mr. Christy: Your Honor, the Government offers Government's Exhibits 307 and 307-A for identification, and may be substitute photostats?

The Court: You may.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibits 307 and 307-A for identification received in evidence.)

Q. Mr. Kelly, referring to Government's Exhibit 307 in evidence, will you tell us what that work order was for? A. That work order was for installing an air—first of all, altering the casement window, and installing an air-conditioner in that casement window.

Q. In the Costello's apartment? A. Yes.

Q. Will you speak up a little, Mr. Kelly, so the last man in the jury may hear you? A. Yes.

Q. From Government's Exhibit 307 can you tell us what kind of air-conditioner was installed? A. A Philco Air-Conditioner.

Q. Does it give the model number?

Mr. Fennelly: I object to it as immaterial.

The Court: It seems to me that is so.

(1338) Mr. Fennelly: If anything is material, what was paid is.

The Court: Do you need that in connection with the figure—

Mr. Christy: Yes, your Honor, but we expect to be able to connect it up through the figure he gives, the model number.

The Court: You mean you need that in order to prove—

Mr. Christy: Yes.

The Court: —what the payment was?

Mr. Christy: That is right.

The Court: You may go ahead and do that.

Q. Referring to Government's Exhibit 307, does that indicate there was a Philco Air-Conditioner Model 76-E? A. Yes.

Q. And that the serial number was 413974? A. Yes.

Q. Referring to Government's Exhibit 307 and 307-A in evidence, can you tell us how much was paid for that work done, installing the air-conditioner? A. Both of them, was a total of $120.61.

Q. That was paid in 1949, was it? A. Yes, sir.

The Court: What was that amount?

Mr. Christy: $120.61.

(1339) No further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. I beg your pardon, sir?

Q. I said, did you testify before the grand jury that returned the indictment in this case? A. Did I testify?

Q. Yes.

The Court: Yes.

A. No, sir.

Mr. Fennelly: That is all.

Mr. Christy: Thank you, Mr. Kelly.

The Witness: Thank you.

(Witness excused.)

Mr. Christy: The Government calls Edwin Gearhart.

EDWIN W. GEARHART, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Gearhart, where do you live? A. 7203 Juniper Valley Road, Middle Village, Long Island.

(1340) Q. Where are you employed, sir? A. Cadillac Motor Car Division, General Motors Corporation, 224 West 57th Street, New York.

Q. How long have you been with the Cadillac Motor Division? A. Eight and a half years.

Q. Are you the chief clerk with the Cadillac Motor Division? A. That is right.

Q. And in your position as chief clerk, do you have access to the records kept by the Cadillac Motor Division? A. I do.

Q. And do these records kept by the Cadillac Motor Division show the sales of Cadillacs to Mrs. Costello and also work done for her? A. That is right.

Mr. Christy: Your Honor, I have here Government's Exhibits 277 through 277-F which were marked the other day.

The Court: Very well.

Q. Mr. Gearhart, I show you Government's Exhibits 277 and 277-A through F and I ask you if these are ledger sheets and contracts and repair orders relating to the sales of Cadillacs to Mrs. Costello and work done for Mrs. Costello? A. That is right.

Q. With the exception of Government's Exhibits 277-C and 277-D for identification which are a ledger sheet and a contract relating to the sale of a Cadillac (1341) to one Joseph Henschel? A. That is right.

Q. And are all of these contracts and ledger sheets and repair orders records kept by Cadillac in the regular course of its business? A. They are.

Q. And is it the regular course of Cadillac's business to keep these records? A. It is.

The Court: 277 through what?

Mr. Christy: 277 and 277-A through F, your Honor. The Government offers them in evidence.

Your Honor, the Government will restrict its offer on 277-F to so much of the record as pertains to the year 1949.

Mr. Fennelly: I object to all of them as being irrelevant and immaterial, and as to 277-C and 277-D as incompetent, in addition.

The Court: Very well. With respect to all of the exhibits offered, except 277-C and 277-D, the objection is overruled and they may be marked.

Now, with respect to Exhibits 277-C for identification and 277-D for identification I think that perhaps you had better establish a better foundation than you have at the moment, and I will withhold the ruling until you do so.

Mr. Christy: May I speak on those two, your Honor?

(1342) The Court: You may.

Mr. Christy: The Government expects to prove that—

The Court: You had better not state your offer of proof.

Mr. Christy: All right.

The Court: I take it you intend to connect them up.

Mr. Christy: Yes, your Honor.

The Court: Well, you may do so. You mean with additional testimony, through another witness?

Mr. Christy: If we will use additional testimony; we will, perhaps, connect it up through this witness.

The Court: You may establish it through this witness if you can, or at least you may make the attempt to do so.

(Government's Exhibits 277, 277-A, 277-B, 277-E and 277-F for identification received in evidence.)

Q. Mr. Gearhart, looking at Government's Exhibit 277, that is a ledger sheet in the name of Loretta Costello of 115 Central Park West, is that correct? A. That is correct.

Q. Does that show that a Cadillac was purchased (1343) by her in December of 1936? A. That is correct.

Q. And what was the price of that Cadillac?

Mr. Fennelly: I object to that, your Honor; it is prior to any starting point.

The Court: Overruled.

A. $4,468.

Q. And that was purchased in the month of December 1936, is that correct? A. That is correct.

Q. Now, also referring—withdraw that.

Referring to Government's Exhibit 277-B in evidence, is that a contract between the Cadillac Motor Division and Loretta Costello for the purchase of a 1941 Cadillac? A. That is correct.

Q. And is Government's Exhibit 277-A in evidence the order that was prepared prior to the signing of the contract for the purchase of that Cadillac? A. That is correct; that is the work sheet that is prepared.

Q. And that shows the price of the car and the extras that were ordered, is that correct? A. That is correct.

The Court: Keep your voice up a little will you, please, Mr. Gearhart? That last juror has to be able to hear you.

The Witness: Yes, sir.

(1344) Q. Now, when was the contract for the purchase of that 1941 Cadillac signed?

The Court: Well, when you say "that contract" you mean Exhibit B, don't you?

Mr. Christy: Government's Exhibit 277-B.

A. June 26, 1941.

Q. And, from Government's Exhibit 277-A, what was the total cash price of the Cadillac?

Mr. Fennelly: I object to the price, your Honor. I think it is whether or not it was paid is what we want, isn't it?

Mr. Chrisfy: I expect to show that it was paid, your Honor.

The Court: Well, it would not mean very much to say that the car was paid for unless the amount was specified, would it? Go ahead.

A. $2,596.75.

Q. Now, the figure on the contract is $2,549.75, is that correct? A. That is correct.

Q. There are two items on Government's Exhibit 277-A of $39.96 and $6.04 which relate to the sales tax, is that correct? A. That is correct.

Q. Now, from Government's Exhibit 277-B, does it show that Mrs. Costello turned in a Cadillac, a 1937 Cadillac? A. Yes, it does.

(1345) Q. And how much did she receive on that turn-in? A. $250.

Q. Again referring to Government's Exhibit 277-A, does that show how much cash was paid on the delivery of the car? A. Yes, it does.

Q. Is that $650? A. That is correct.

Q. I refer you to Government's Exhibit 277, which is a ledger sheet in Mrs. Costello's name. Does that show a cash deposit or payment of $649.99? A. That is correct.

Q. And that is the figure that was actually paid by her, is that correct? A. That is correct.

Q. Government's Exhibit 277 also shows the amount that she received for the used car of $250? A. That is correct.

Q. And it shows a figure of $2,596.75, which was the total cash price of the car? A. That is correct.

Q. From Government's Exhibit 277-A, does it indicate that the purchase of this car was financed? A. Yes, it does.

Q. In other words, the total cash price was not paid at the time of delivery? A. That is right.

Q. Does it indicate how much the cost of the financing was? A. Yes, it indicates the finance charges.

(1346) Q. How much were they? A. $247.97.

Q. Does it indicate the method by which the amounts were to be paid? A. Yes, it does.

Q. Is that 108—

The Court: When you say "amounts," you mean the installments?

Mr. Christy: That is right, your Honor.

Q. The record indicates that there were to be 18 monthly payments at $108.04 a month, is that correct? A. That is correct.

Q. Including the finance charges, the total cost of the car to Mrs. Costello would have been $2,844.72, is that correct? A. That is correct.

Q. Allowing her for the car she turned in and for the cash that she gave at the time of delivery, that would leave a balance due of $1,944.72, is that correct? A. Correct.

Q. And that figure also represents 18 monthly payments at $108.04 a month? A. That is correct.

Q. Referring to Government's Exhibit 277 in evidence, there is a figure there of $1,696.76. Is that the figure that represents the money that the Cadillac Motor Division people received when this car was financed or prior to the final payment on the financing? A. That is correct.

(1347) Q. Mr. Gearhart, I refer you to Government's Exhibit 277-E, which consists of 11 sheets, and ask you if those are work orders for repairs to a car belonging to Mrs. Costello? A. That is correct.

Q. Referring to the first work order, will you tell me what kind of car was brought in? A. Want the—

Q. It was a Cadillac, wasn't it? A. Yes, sure, Cadillac, sure. 1948 Cadillac.

Q. 1948 Cadillac? A. That is right.

Q. Will you tell me what the engine number on that Cadillac was? A. 4860-14610.

Q. I refer you to Government's Exhibit 277-C and ask you if that engine number which you have just given us appears on that ledger sheet? A. Yes, it does.

The Court: That ledger sheet is a sheet on which a name appears which is different from—which is not Mrs. Costello?

The Witness: That is correct.

Q. I ask you what the date of the first repair order on Government's Exhibit 277-E in evidence is? A. May 11, 1948.

Q. Will you look again? Is it not May 25, 1948? A. I was looking at the delivery date. That is (1348) right. The date the repair order was made was May 25, 1948.

Q. Again referring to Government's Exhibit 277-C for identification, will you give us the date on that ledger sheet on which an amount was paid? A. May 18, 1948.

Q. That was one week before? A. That is right.

Q. Again referring back to Government's Exhibit 277-E in evidence, will you read the mileage which was on that Cadillac at the time Mrs. Costello brought it in in May 1948? A. 123 miles.

Mr. Christy: Your Honor, the Government renews its offer of Government's Exhibits 277 C and D.

Mr. Fennelly: Same objection, your Honor.

The Court: E?

Mr. Christy, would you come up here, please?

(Side bar discussion between the Court and Mr. Christy out of hearing of the jury.)

The Court: I will sustain the objection.

Now, we will go to lunch. And you may renew your effort to establish a foundation for the admission of both exhibits.

2.15, ladies and gentlemen. Remember the instructions of the Court.

(Recess to 2.15 p.m.)

(1349) AFTERNOON SESSION

(Jury in box.)

Mr. Christy: Mr. Gearhart.

EDWIN W. GEARHART, resumed.

Direct Examination by Mr. Christy (Continued):

Q. Mr. Gearhart, referring back to Government's Exhibit 277 in evidence for a minute, I believe you testified that Loretta Costello purchased a Cadillac in 1936; is that correct? A. That is correct.

Q. And that was a 1937 Cadillac? A. That is correct.

Q. Referring to Government's Exhibit 277-A in evidence, I believe you testified as to the financing of that car that there were to be 18 payments at $108.04 a month. Now, the car was purchased in June 1941, so that the first payment, under the financing plan, would have been in July of 1941; is that correct? A. That would be correct, sir.

Q. Also referring to Government's Exhibit 277-A, this morning you testified that there were two sales taxes, one of $39.96 and one of $6.04. There was also a license fee of $1, is that correct? A. That is correct.

(1350) Q. Referring to Government's Exhibit 277-E in evidence, I believe you told us this morning that those

were repair orders for Mrs. Loretta Costello; is that correct? A. That is correct.

Q. And that the first repair order is dated May 25, 1948. Will you tell us the date of the last repair order? A. August 11, 1949.

Q. I believe you also testified that the engine number on the first repair order there was 4860-14610. Will you look through those other repair orders and tell me if that engine number is on each and every one of those repair orders? A. Yes, it is.

Q. And that engine number is the engine number of the car brought in by Loretta Costello and always entered on the repair order, is that correct? A. That is correct.

Q. You testified, I believe, this morning that the car was first brought in on May 25, 1948, and that the mileage, according to that repair order, was 123 miles; is that correct? A. That is correct.

Q. Now, these repair orders show the work done on the car belonging to Mrs. Costello, is that right? A. That is right.

Q. And the amount charged is also on the repair orders? A. That is right.

(1351) Q. Have you compnted the amount that was paid for service to the car and for repairs during the years 1948, 1949?

The Court: Before you answer that, will you let me see that Exhibit E, please?

(Witness hands to Court.)

The Court: Very well. Now, will you repeat that question to the witness?

(Question read.)

A. Yes, I have.

Q. Was the figure in 1948, $145.72? A. That is correct.

The Court: How much?

Mr. Christy: $145.72.

The Court: Thanks.

Q. And in 1949, $164.94? A. That is correct.

Q. Now, those repair orders are all carried under the name of Mrs. Costello, are they not? A. They are.

Q. And does it indicate on those repair orders that they were cash sales? A. Yes, it does.

The Court: They were what?

The Witness: Cash sales.

Q. And that she paid for the services recorded on Government's Exhibit 277-E? A. Yes.

Mr. Christy: Your Honor, the Government again (1352) renews its offer of Government's Exhibit 277-C.

Mr. Fennelly: The same objection, your Honor.

The Court: Let me see them.

(Mr. Christy hands to the Court.)

The Court: Overruled—sustained, rather.

Q. Mr. Gearhart, looking at the first repair order, the mileage is 123; is that correct? A. That is correct.

Q. And the mileage on the repair order of December 13, 1948 is 2,205 is that correct? A. That is correct.

Q. And the mileage on the repair order of January 17, 1949 is 2,239 dollars?

Mr. Fennelly: Miles.

A. You mean miles?

Q. Mileage is 2,239? A. On January 17?

Q. 1949? A. 2,239, that is correct.

Q. And the repair order of August 8, 1949 shows a mileage of 4,252 miles, is that correct? A. That is correct.

Q. Referring again to the first repair order on May 25, 1948, that shows that Mrs. Costello purchased 15 gallons of gasoline for $4.01, is tha correct? A. That is correct.

(1353) Q. Those repair orders don't show any other sales of gasoline to Mrs. Costello, do they? A. They do not.

Q. The car that Mrs. Costello had was a 1948 Cadillac, is that correct? A. That is correct.

Q. Would you tell us the approximate mileage that a Cadillac of that type and model would go on a gallon of gasoline?

Mr. Fennelly: I object to it, your Honor, as conjectural; and makes a great deal of difference whether a car is driven in the city or country; and even as between cars they differ of the same make.

Mr. Christy: I am asking him for an average figure, your Honor.

The Court: You had better find out what his experience has been.

Q. Are you familiar with—

The Court: Have you driven Cadillacs for the type that you say was purchased by Mrs. Costello?

The Witness: I have driven them, that is, a Cadillac.

The Court: Have you made any—have you driven them at any great extent?

The Witness: No, not—

The Court: How much would you say you have driven (1354) them?

The Witness: Oh, in the neighborhood of about 300 miles, all told, at different times.

The Court: How long has the longest run been?

The Witness: About 65 miles.

The Court: You don't own one yourself?

The Witness: No, I do not.

The Court: You didn't drive one for someone else where you did all the driving?

The Witness: No, I did not.

The Court: I will sustain the objection.

Q. Referring to Government's Exhibit 277-F in evidence, that is a ledger sheet recording the sale of a Cadillac to Mrs. Costello, is it not? A. It is.

Q. And from that record does it appear that on September 9, 1949 she made a deposit of $100 on the purchase of the Cadillac? A. That is correct.

Mr. Christy: Your Honor, the Government would offer Government's Exhibit 277-C and restrict its offer to the third and fourth lines of the exhibit.

The Court: Show it to your adversary.

(Mr. Christy handing paper to Mr. Fennelly.)

Mr. Christy: Correction, second, third and fourth lines.

Mr. Fennelly: I object to it as incompetent, (1355) irrelevant and immaterial.

Mr. Christy: Your Honor, the witness has testified—

The Court: Just a minute. I want to find out what you mean. What do you mean by the second, third and fourth lines? These right here?

Mr. Christy: No, I am referring to the date here, this line and this line (indicating).

The Court: The objection is sustained.

Now, I will direct you, Mr. Christy, that unless you lay a real foundation, there is no point in taking up our time reoffering that exhibit or the part that you have just offered. I state now, as a matter of law, that you have laid no foundation for it and it is only taking up time. You have, however, leave to reoffer it at any time before the close of the trial if a proper foundation is laid.

Mr. Christy: I have no further questions, your Honor.

May we have leave to substitute photostats for these exhibits?

The Court: Oh, yes.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? (1356) A. I did not.

Q. You said something about a financing of a car. Was that in 1941? A. 1941, yes.

Q. Was that done through General Motors Acceptance Corporation? A. That is correct.

Q. That is a subsidiary of General Motors, is it not? A. Yes, it is a division of General Motors.

Q. And a great number of cars that General Motors sells are financed that way, are they not?

Mr. MacMahon: I object to the question. No relevancy to this question.

The Court: I don't see it has any relevancy, but it does no harm, surely; we all know that.

Mr. MacMahon: We can stay here until Christmas.

Q. Well, isn't it correct that some 80 per cent of the, or upward, of the cars sold in the United States are financed that way? A. I wouldn't know that.

Q. Do you know the percentage of the sales of General Motors cars that are financed that way?

Mr. MacMahon: I object.

The Court: Sustained.

Q. Which one of these sheets was it you were testifying to about those payments on this financed car? A. Daily recap sheet made of the repair orders during the years 1948 and 1949.

(1357) Mr. Christy: I believe you are referring to Government's Exhibit 277-B, Mr. Fennelly, aren't you?

Mr. Fennelly: I am referring to the financing.

The Witness: Oh, the financing of the car?

The Court: Which car are you talking about?

Mr. Fennelly: 1941.

The Court: 1941 transaction?

The Witness: The work sheets is made up—

Q. Your testimony about this financed car in 1941 was from 277-A? A. That is correct, and the accounts receivable ledger card shows the entries.

Q. Which exhibit is that? A. That is 277.

Q. And the delivered price of the car is $2,287.97? A. Delivered price of the car is $2,596.75, the total cash price, which would include the accessories.

Q. And how much of these monthly payments constituted interest? A. I am not familiar with the—how that is arrived at, interest.

Q. You know that part of each one of those payments is an item of interest? A. Yes. I can tell you the total finance charges on the car.

Q. I would like to know it on the monthly basis; if you have it? A. I don't have it.

Q. What is the total figure? A. Total cash price?

(1358) Q. For interest. No, for interest. A. $247.97.

Q. Is that for interest? A. That is the cost of financing the car.

Q. Those are interest charges? A. Yes, would be interest charges.

The Court: Is it interest and something else or is it simply interest?

The Witness: Well, I suppose that would be interest plus the finance charges. I am not—

Q. How much of it is interest? A. I don't know.

Q. Haven't you any records that would show? A. No, I don't. I don't know of any record that would show that.

Q. Is some of it insurance? A. No. I'll say it is the cost of financing the car. I don't think there would be any insurance in there, in that figure.

Q. You have no records which would show the amount of interest? A. No. GMAC possibly might have some records. I don't know of—

The Court: The question is, do you have any in your place?

The Witness: I don't know, to tell you the truth.

The Court: Very well. At least you haven't (1359) any with you now?

The Witness: No, I don't have any with me now.

The Court: Very well.

Q. And General Motors Acceptance Corporation, you say, might have that? A. They may. I don't know.

Mr. Fennelly: That is all.

Mr. Christy: Thank you, Mr. Gearhart.

(Witness excused.)

Mr. Christy: The Government calls Mrs. Julia Mosher.

JULIA MOSHER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mrs. Mosher, where do you live? A. 643 East 224th Street, in the Bronx, New York.

Q. Where do you work? A. At Tryforos Bros.

Q. And how long have you been with Tryforos Bros.? A. Approximately eight and a half years.

Q. Will you tell us, briefly, what Tryforos Bros. is? A. Retail florists.

Q. Are you the bookkeeper at Tryforos? A. That is right.

(1360) Q. As bookkeeper, are you familiar with and do you have access to the books and records kept by Tryforos? A. Yes.

Q. Do you know if from your records Tryforos had an account for Mrs. Costello? A. We did.

Q. And have you those records with you, Mrs. Mosher? A. Yes.

(Marked Government's Exhibit 308 for identification.)

Mr. Christy: May the record show that Government's Exhibit 308 for identification has seven sheets—five. I am sorry, your Honor.

Q. Mrs. Mosher, I hand you Government's Exhibit 308 for identification. I ask you if those are the ledger sheets relating to the account of Mrs. L. Costello of 115 Central Park West? A. Yes, sir.

Q. And do those ledger sheets show the payments by her on that account? A. That is right.

Q. And are those records kept in the regular course of business? A. Yes.

Q. And is it the regular course of your business to keep such records? A. Yes.

The Court: Will you indicate what period of time they cover?

The Witness: From 1944 till 1949.

(1361) Q. 1944 through 1949? A. That is right.

The Court: Thank you.

Mr. Christy: Your Honor, the Government offers so much of Government's Exhibit 308 as covers the period 1944 through 1949.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibit 308 for identification received in evidence.)

Q. Mrs. Mosher, referring to Government's Exhibit 308 in evidence, page 55, page 63, page 65, and page 75 of that exhibit are ledger sheets from a general ledger which record sales to various persons; is that correct? A. That is right.

Q. And the last sheet of that Exhibit No. 308 in evidence, under the account No. 106-C, is a ledger sheet under the name of Mrs. Costello; is that correct? A. That is right.

Q. So that you have a running record of her purchases from 1944 through 1949? A. That is right.

The Court: I take it with respect to those purchases that reflect the accounts of others than Mrs. Costello you are not offering?

Mr. Christy: No, I am not offering those, (1362) your Honor.

May we substitute appropriately blocked out photostats?

The Court: Only such entries as are chargeable to Mrs. Costello.

Mr. Christy: Yes, your Honor.

Q. And from Government's Exhibit 308, Mrs. Mosher, have you computed the totals that were paid on that account? A. April 1944, $9.60.

Mr. Fennelly: How much?

The Witness: $9.60.

A. (Continuing) 1945, $14.14. 1946, $28.56. 1947, $44.36. 1948, $53.04. 1949, $29.07.

Julia Mosher—for Government—Cross
Bernard L. Dendo—for Government—Direct

Mr. Christy: No further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Do those prices include the City sales tax? A. Yes, sir, they do.

Q. And did you testify before the grand jury that returned the indictment in this case? A. I have never been in court before.

Mr. Fennelly: That is all.
Mr. Christy: Thank you, Mrs. Mosher.
The Witness: Your welcome.

(Witness excused.)

(1363) Mr. Christy: The Government calls Bernard Dendo.

BERNARD L. DENDO, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Dendo, where do you live? A. 277 West End Avenue.

Q. What is your business, sir? A. I am an insurance broker.

Q. What is the name of your company? A. Harry Dendo & Son, Incorporated.

Q. Where is that located? A. 111 John Street, New York City.

Q. Are you the treasurer of Harry Dendo & Son? A. That is correct.

Q. Harry Dendo & Son is in the insurance brokerage business? A. That is correct.

Q. You are the treasurer, you said? A. Yes, sir.

Q. Do you know if Harry Dendo & Son has handled insurance for Mrs. Costello? A. Yes, sir.

Q. And, do you have the records relating to that account? A. Yes, sir.

Q. May I have them, sir? A. (Witness hands to (1364) Mr. Christy).

(Marked Government's Exhibits 309 and 310 for identification.)

Q. Mr. Dendo, I show you Government's Exhibit 309 for identification and ask you if that is a ledger sheet on which you kept the account of Loretta Costello? A. That is correct.

Q. And is the entry on there May 26, 1949? A. Yes, sir.

Q. I show you Government's Exhibit 310 for identification and ask you if that also is a record of the account of Loretta Costello of 115 Central Park West, dated May 5, 1949? A. That is correct.

Q. And are those two Exhibits, 309 and 310, records kept by your firm in the regular course of its business? A. Yes, sir.

Q. And it is the regular course of your firm's business to keep such records? A. Yes, sir.

Mr. Christy: I offer them, your Honor.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibits 309 and 310 for identification received in evidence.)

Q. Mr. Dendo, referring to Government's Exhibit 309, (1365) that shows that on May 26, 1949 Mrs. Costello insured a 1948 Cadillac; is that correct? A. Yes, sir.

Q. Also referring to Government's Exhibit 309, does it show that on July 7, 1948 she paid a premium for the insurance of that Cadillac in the amount of $323.28? A. Yes, sir.

Q. And in 1949—

The Court: Just a minute, please. What was that figure, Mr. Christy?

Mr. Christy: $323.28, your Honor.

Q. And in 1949 she paid a premium of $322.61, is that correct? A. Yes, sir.

Q. But she was issued a refund because the policy was canceled? A. Yes, sir.

Q. And the amount of the refund was $138.36? A. Yes, sir.

Q. Leaving a net payment by her in the amount of $184.25, is that correct, sir— A. Yes, sir.

Q. —in the year 1949? A. That is correct.

Q. Now, referring to Government's Exhibit 310 in evidence, which you testified is a card kept by your business on which your record insurance, does this show that Mrs. Costello insured a 1948 Cadillac? A. Yes, sir.

The Court: Just a minute, now.

(1366) Mr. Christy: That is 310, your Honor.

The Court: Yes, I know. I just wanted to get the number. All right.

Bernard L. Dendo—for Government—Direct

Q. Now, does this record show the engine number of the Cadillac which she insured? A. Yes, sir.

Q. And what is that number, sir? A. 4860-14610.

Q. I show you Government's Exhibit 277-E in evidence, which is a work order of the Cadillac Motor Division which records—

The Court: Are you going to ask him to read what is on there?

Mr. Christy: I asked if it is the same number.

The Court: Oh, I see. That is not in evidence. You may do that.

Mr. Christy: This is in evidence, your Honor.

The Court: E? Yes. You can read that to the jury.

Q. That is the same number, 4860-14610? A. That is correct.

Q. And this card, Government's Exhibit 310 in evidence, shows the cost of that Cadillac at $4,400, does it not? A. Yes, sir.

Q. Does it show at the bottom the date of May 1948, in the lower lefthand corner? A. Yes, sir.

(1367) The Court: What was that?

Mr. Christy: The date of May 1948 on this Government's Exhibit 310, your Honor.

The Court: Let me see 310, please?

(Witness hands to Court.)

The Court: Let me see the other one.

(Witness hands to Court.)

The Court: Very well.

Q. I show you Government's Exhibit 277-C for identification and ask you if that number 4860-14610 appears on this exhibit? A. Yes, it does.

Mr. Christy: Again the Government offers Government's Exhibit 277-C in evidence, your Honor.

The Court: Show it to your adversary.

Mr. Fennelly: I object to it as incompetent and irrelevant.

The Court: Sustained.

Mr. Christy: May we substitute photostats for these exhibits, your Honor?

The Court: Yes.

Mr. Christy: I have no further questions.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Q. Would you tell us the date of the refund of (1368) the part of the premium? A. On October 5 the policy was canceled.

Q. What year, sir? A. 1949, and that is my check number (indicating).

Mr. MacMahon: We can't hear.

The Court: Keep your voice up so the jury can hear you. It is very important that the last juror hear you.

Repeat what the witness said.

The Witness: According to this record, the policy was canceled October 5, 1949 and our check for the

refund was check No. 1858 in the amount of $138.36, drawn December 14, 1949.

Mr. Fennelly: That is all.

Mr. Christy: No further questions.

Thank you, Mr. Dendo.

(Witness excused.)

Mr. Christy: The Government calls Bradley Ross.

BRADLEY P. ROSS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Ross, where do you live? A. New Canaan, Connecticut.

(1369) Q. Where are you employed, sir? A. John Street, New York.

Q. What is the name of your company? A. The Columbian National Life Insurance Company.

Q. Where is the head office of the Columbian National Life Insurance Company? A. Boston, Massachusetts.

Q. Are you the general agent in New York for the Columbian National Life Insurance Company? A. Yes, sir.

Q. In your position as general agent you have access to the books and records of the branch office here in New York? A. Yes.

Q. Mr. Ross, do you know if the Columbian National Life Insurance Company has ever written a policy for Frank Costello? A. Yes, sir, I do.

Q. Have you the records relating to that policy, sir? A. Yes.

Q. May I have them? A. (Handing papers to Mr. Christy).

(Marked Government's Exhibits 311 and 311-A for identification.)

Q. Mr. Ross, I show you Government's Exhibit 311 for identification and 311-A for identification and ask you if these are the ledger cards kept in the regular (1370) course of your business for an insurance policy issued to Frank Costello? A. Yes, they are.

Q. And do they cover the period from October 18, 1937 through December 31, 1949? A. Yes, sir.

Q. Do they also record the premium payments on these cards? A. Yes.

Q. And these cards, Government's Exhibits 311 and 311-A, are records kept in the regular course of Columbian's business? A. Yes.

Q. And it is the regular course of Columbian's business to keep such records? A. Yes.

Mr. Christy: I offer Government's Exhibits 311 and 311-A, your Honor.

Mr. Fennelly: No objection.

(Government's Exhibits 311 and 311-A for identification received in evidence.)

Q. Mr. Ross, referring to Government's Exhibit 311, will you tell us the type of insurance which you issued? A. Twenty payment life.

Q. On the life of Frank Costello, is that correct? A. Yes.

Q. What was the face amount of the policy? A. $10,000.

Q. Does it show when it was issued. A. Yes, March 29, 1927.

(1371) Q. Does it indicate when it was paid up? A. Yes, March 29, 1947.

Q. Does it also indicate what the total annual premium was? A. Yes.

Q. How much was that, sir? A. $388.70.

Q. Do your records indicate, that is, 311 and 311-A, that that total annual premium of $388.70 was paid in each of the years from 1938 through 1946? A. Yes.

Q. That would include the year 1938 and the year 1946? A. Yes.

Q. And that full premium was paid in each year? A. Yes.

Q. Was the policy eventually surrendered? A. Yes.

Q. Can you tell us when that was? A. January 20, 1950.

Q. 1950? A. Yes.

Q. Mr. Ross, were there any loans taken out on the policy? A. Yes.

Q. Does that record indicate what they were? A. In 1931 a loan was made to pay the premium due in 1931.

Q. And that loan was increased from time to time by the interest on the premium, is that right? A. Correct.

(1372) Q. Do these records also indicate that in certain years the interest on the premium—on the loan was paid by the insured? A. Well, they indicate that the interest was paid. We have no way of telling who paid it.

Q. Were those the years, 1939 in which the amount of $31.78 was paid? A. Yes.

Q. And in 1941 in which the amount of $33.81 was paid? A. Yes.

Q. And $33.81 paid in 1942? A. Yes.

Q. And $35.96 paid in 1944 and 1945? A. Yes.

Q. And the amount of $40.70 paid in the year 1949? A. Yes.

Q. There were no loans taken out against this policy between 1937 and 1949 other than the accrued interest on the loan which was added to the balance of the loan in those

years in which the interest was not paid? A. That is right.

Q. Mr. Ross, when the policy was surrendered and a payment was made to Frank Costello in 1950, as you have indicated, was the outstanding loan deducted from the amount that was due him— A. Yes.

Q. —in 1950? A. Yes.

Mr. Christy: No further questions, your Honor.

May we substitute photostats at the close of (1373) Mr. Ross' testimony?

The Court: Yes, you may.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. I beg your pardon?

Q. Did you testify before the grand jury that returned the indictment in this case? A. I haven't testified before, sir.

The Court: No, then it wasn't before the grand jury?

The Witness: No.

Q. When you speak of a loan to pay a premium, I mean, your insurance company did not actually lend Mr. Costello money in the sense of giving him a check for it, did it? A. No.

Q. What you call a loan on a policy was where you deduct from the cash value of the policy so much money to pay the premiums; is that what you mean? A. That is what happened in this instance.

Q. Yes, and when you say a loan was outstanding at the end when the policy was surrendered, you don't mean that Mr. Costello actually owed your insurance company any money but that his policy had been decreased in value by

the amount that you had advanced for premiums? (1373-A) A. That is right.

Mr. Fennelly: That is all.

The Court: Very well.

Mr. Christy: Thank you, Mr. Ross.

(Witness excused.)

The Court: We will take our recess now.

(Jury retires.)

(Short recess.)

(1374) Mr. Christy: The Government calls Dr. Charles Gavin.

The Court: I didn't hear you.

Mr. Christy: Dr. Charles Gavin, G-a-v-i-n.

CHARLES KENNETH GAVIN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Dr. Gavin, will you keep your voice up just a little so the last member of the jury may hear you?

Where do you live, sir? A. 302 West 12th Street, New York City.

Q. What is your occupation, Dr. Gavin? A. I practice dentistry.

Q. How long have you been practicing dentistry? A. I am in my fortieth year.

Q. Have you ever had occasion to treat Frank Costello? A. Yes, sir.

Q. And do you have a record card showing the payments by him for services? A. Yes, sir.

Q. May I have it, sir? A. Yes, sir (handing).

(Marked Government's Exhibit 312 for identification.)

Q. Dr. Gavin, I show you Government's Exhibit 312 (1375) for identification and I ask you if that is a ledger card on which are recorded the payments by Frank Costello for dental services? A. Yes, sir.

Q. And is that a record kept by your office in the regular course of your office's business? A. Yes, sir.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 312 for identification and restricts its offer solely to the dates and amounts paid for the year 1949.

The Court: Very well. And you will offer suitably blocked-out, if that is necessary, photostats.

Mr. Christy: Yes, your Honor.

Mr. Fennelly: No objection. I assume, too, that the description of the fillings or whatever they be is not—

The Court: Yes. That was restricted—

Mr. Christy: I am not offering that, Mr. Fennelly.

The Court: —mainly to the amounts and the dates of payment.

Mr. Christy: That is right, your Honor.

(Government's Exhibit 312 for identification received in evidence.)

Charles K. Gavin—for Government—Cross
Ruth Smith—for Government—Direct

Q. Dr. Gavin, I ask you, from Government's Exhibit (1376) 312 in evidence, if that indicates that you received from Frank Costello the amount of $285 in the year 1949? A. Yes, sir.

Mr. Christy: No further questions.

Cross Examination by Mr. Connelly:

Q. You did not testify before the grand jury that returned the indictment in this case, sir, did you? A. No, sir.

The Court: Very well, Doctor, that completes your testimony.

Mr. Christy: Thank you, Dr. Gavin.

The Witness: Thank you, sir.

(Witness excused.)

Mr. Christy: The Government calls Miss Ruth Smith.

RUTH SMITH, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Miss Smith, where do you live? A. 1035 Grand Concourse, Bronx.

Q. Will you keep your voice up just a little so the last man in the jurybox may hear you? A. Yes.

Q. Where are you employed? A. Hattie Carnegie.

Q. I beg your pardon? A. Hattie Carnegie, (1377) Incorporated.

Q. Where is that? A. 42 East 49th.

Q. Hattie Carnegie sells women's clothes and millinery, is that correct? A. Yes.

Q. Miss Smith, from your records can you tell us if you carried an account for Mrs. Frank Costello? A. Yes, we did.

Q. May I have it? A. (Witness hands to Mr. Christy.)

(Marked Government's Exhibit 313 for identification.)

Mr. Christy: May the record indicate that it consists of two sheets, your Honor.

Q. Miss Smith, I show you Government's Exhibit 313 for identification and I ask you if that is a ledger sheet of the account of Mrs. Frank Costello of 115 Central Park West? A. Yes, it is.

Q. And if the first entry on that is December 17, 1943? A. Yes.

Q. And the last entry 1946? A. Yes.

Q. And this ledger sheet, Government's Exhibit 313, is a record kept by Hattie Carnegie in the regular course of its business? A. Yes, it is.

Q. And it is the regular course of its business to keep such record? A. Yes.

(1378) Mr. Christy: Your Honor, the Government offers 313 for identification.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibit 313 for identification received in evidence.)

Q. Miss Smith, I show you Government's Exhibit 313 in evidence and I ask you if that indicates that in 1944 the sum of $37.88 was paid? A. That is right.

Q. And in 1945 if the sum of $1092.68 was paid? A. Yes, sir.

Q. That's right? A. Yes, sir.

Q. And in 1946 if the sum of $37.88 was paid? A. Yes, sir.

Mr. Christy: No further questions, your Honor. May we substitute photostats at a later date?

The Court: You may.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, I didn't.

Mr. Fennelly: That is all.

Mr. Christy: Thank you, Miss Smith.

(Witness excused.)

(1379) Mr. Christy: The Government calls Mrs. Elinor Lambert.

Elinor Lambert—for Government—Direct

ELINOR LAMBERT, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mrs. Lambert, where do you live? A. New York City.

Q. Whereabouts in New York City? A. At 545 West 111th Street.

Q. Where do you work, Mrs. Lambert? A. Theodore Hofstatter & Company, Incorporated, 9 East 56th.

Q. How long have you been with Hofstatter? A. Almost 26 years.

Q. Will you tell us briefly what Hofstatter does? A. We are interior decorators.

Q. Are you the secretary of Theodore Hofstatter? A. Secretary of the corporation.

Q. Are you familiar with the books and records of the corporation? A. I take care of all the accounts.

Q. Do you know if your books reflect an account for Mrs. Costello? A. I do.

Q. And have you brought with you the record relating to that account? A. I brought the ledger account.

(Marked Government's Exhibit 314 for identification.)

(1380) Q. Mrs. Lambert, I show you Government's Exhibit 314 for identification and ask you if that is the ledger sheet kept for the account of Mrs. Frank Costello? A. It is.

Q. 115 Central Park West? A. Right.

Q. And it shows entries in 1945 and 1949, is that correct? A. Right.

Elinor Lambert—for Government—Cross

Mr. Christy: Your Honor, the Government offers Exhibit 314 for identification in evidence.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibit 314 for identification received in evidence.)

Q. Mrs. Lambert, from Government's Exhibit 314 in evidence does it indicate that there was a payment on this account in May 1945 in the amount of $161.60? A. That is right.

Q. And in 1949 were there two payments totalling $382.50? A. That is correct.

Mr. Christy: May we substitute a photostat, your Honor?

The Court: Yes, you may.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned (1381) the indictment in this case? A. I haven't testified.

Q. And these payments included the Sales Tax, did they not? A. Yes, they did.

Q. They were for merchandise? A. They were.

Q. It is quite usual, isn't it, when people have been married over 30 years to have to refurbish their home? A. I believe it is.

Mr. Fennelly: That is all.

Mr. Christy: Thank you, Mrs. Lambert.

The Witness: Is that all?

The Court: Yes, you may go.

(Witness excused.)

Mr. Christy: The Government calls Otto Vondrak.

OTTO VONDRAK, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Vondrak, where do you live? A. 2424 Esplanade, Bronx.

Q. What is your business? A. Furniture decorating and finishing.

Q. And what is the name of the business? A. Otto Vondrak Incorporated.

Q. At 329 East 29th Street? A. Yes, sir.

Q. Are you president of Otto Vondrak? A. Yes.

(1382) Q. Has the firm of Otto Vondrak done work for Mrs. Costello? A. Yes, sir.

Q. And have you the records relating to the work done for her? A. (Handing papers to Mr. Christy.)

(Marked Government's Exhibits 315 and 315 A for identification.)

Mr. Christy: May the record show that Government's Exhibit 315-A consists of five sheets.

Q. Mr. Vondrak, I show you Government's Exhibit 315 for identification and I ask you if that is a ledger sheet in the name of Mrs. Frank Costello dated in the upper left-hand corner 1949? A. Yes, sir.

Q. It is, sir? A. Yes.

Otto Voudrak—for Government—Direct

Q. Will you speak up just a little so the last man in the jury may hear you? A. Right.

Q. I show you Government's Exhibit 315-A for identification, consisting of five sheets, and I ask you if those are duplicate bills in the name of Mrs. Costello of 115 Central Park West, dated in 1942, 1943, 1945, 1944 and 1947? A. Yes. They are for the ledger sheet.

Q. When work is done for a customer a bill is sent to the customer, is that correct? A. Yes.

Q. And a duplicate bill is retained by your firm? A. Yes, sir.

(1383) Q. And that exhibit that you have just identified, 315-A, is the duplicate bills retained by Otto Voudrak, is that correct? A. Yes, sir.

Q. The bills are also posted to a ledger sheet? A. Yes, sir.

Q. Have you searched for the ledger sheets covering the work done for Mrs. Costello for the years 1942, '3, '4, '5 and '7? A. About six years ago there was a fire in the place and some of the records were completely destroyed.

Q. So you have no ledger sheets? A. No, only for the last year.

Q. That is, for 1949? A. Yes.

Q. The duplicate bills, Government's Exhibit 315-A, and the ledger sheet, Government's Exhibit 315, are records kept by your business? A. Yes, sir.

Q. Kept in the regular course of your business? A. Yes, sir.

Q. And it is the regular course of your business to keep such a record? A. Yes, sir.

Mr. Christy: Your Honor, the Government offers Government's Exhibits 315 and 315-A for identification in evidence, and may we substitute photostats, your Honor?

Otto Vondrak—for Government—Cross

The Court: You may.

Mr. Fennelly: I object to them as irrelevant and (1384) immaterial.

The Court: Overruled.

(Government's Exhibits 315 and 315-A for identification received in evidence.)

Q. Mr. Vondrak, referring to Government's Exhibit 315, does the first sheet of that show a payment in March of 1942 in the amount of $15? A. Yes, sir.

Q. And the second sheet show a payment in May 1943 in the amount of $48? A. Yes, sir.

Q. And the fourth sheet show a payment in December of 1944 of $15? A. Yes, sir.

Q. And the third sheet show a payment in January 1945 of $15? A. Yes, sir.

Q. And the last sheet show a payment in November 1947 of $29.12? A. Yes, sir.

Q. And referring to Government's Exhibit 315 in evidence, does that show a payment in July of 1949 of $64.24? A. Yes, sir.

Mr. Christy: No further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Q. These bills, for the most part, are repairing furniture, are they not? A. Yes, sir.

Q. In the first one you repaired a chair and a mirror? (1385) A. Yes, sir.

Q. And on the one in 1945 repaired and reinforced a double bed? A. Yes, sir.

Q. And the one in '44 you fixed up a coffee table? A. Yes, straightened out—

Mr. Fennelly: That is all.

Mr. Christy: Thank you, Mr. Vondrak.

(Witness excused.)

Mr. Christy: The Government calls Alfred H. Renard.

ALFRED H. RENARD, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Renard, where do you live? A. Residence? At 400 East 57th.

Q. You may sit down. I beg your pardon? A. 400 East 57.

Q. Where are you employed? A. I am not employed. I have my own business.

Q. What is that business? A. Cleaning business, dry cleaning business.

Q. The name of it? A. Renard's.

Q. Where is that located? A. 741 Madison.

Q. Have you had this business since 1944? (1386) A. I have.

Q. And it is a dry cleaning business? A. That is right.

Q. You are familiar with the books and records of the business? A. I am.

Q. Do you know if you carried an account for a Mrs. Costello? A. I did.

Q. Will you speak up just a little bit— A. I did.

Q. —so the last man in the jury may hear you? A. Sure.

Q. You did carry such an account? A. I did.

Q. Have you a record showing the payments on that account? A. Yes, I do.

Q. May I have it, sir? A. (Handing papers to Mr. Christy.)

Mr. Christy: The Government proposes to substitute photostats for the pertinent pages in this exhibit.

The Court: Very well.

(Marked Government's Exhibit 316 for identification.)

Mr. Christy: Showing the payments—

The Court: The pages will be A, B, C and so on.

Mr. Christy: May we mark those after court, your Honor? It will save some time. I have them all here.

(1387) Q. Mr. Renard, I show you Government's Exhibit 316 for identification and ask you if that is a cash book kept by your company? A. It is.

Q. And that is a record kept by your company in the regular course of business? A. Yes.

Q. Does it show entries under the name of Costello in the book? A. It does.

Q. Will you speak up just a little, Mr. Renard? A. It does.

Q. Do you know where the Costello listed in the book lives? A. Yes.

Q. What is that? A. I believe its 115 Central Park West.

Q. That is the only Costello that you carried in the book? A. That is right.

Q. That cashbook covers the period from June 1947 through December 1948, does it not? A. It does.

Q. Were you able to locate the cashbook for the period subsequent to December 1948, that is, for the year 1949? A. No, I haven't.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 316 for identification in evidence or so much of the pages as apply to Mrs. Costello.

The Court: Why don't you indicate what the pages are? Are they marked?

(1388) Mr. Christy: They are all marked in the book by slips of paper.

The Court: You are offering the various pages which you will offer subsequently and which can be marked subsequently. As a matter of fact, why don't you do this? While Mr. Fennelly is looking at those pages which you have indicated in the exhibit which is now marked for identification, the clerk might be marking the various pages.

Mr. Christy: They are all in chronological order.

The Court: Are the pages numbered?

Mr. Christy: The pages are numbered.

The Court: Then mark them all as one exhibit.

Mr. Christy: They are numbered and dated.

The Court: 316-A.

(Marked Government's Exhibit 316-A for identification.)

The Court: Consisting of how many pages?

The Clerk: 18 pages.

Mr. Fennelly: Objected to as irrelevant and immaterial.

The Court: Overruled.

(Marked Government's Exhibit 316-A for identification, received in evidence.)

(1389) Q. Mr. Renard, have you a computation as to the total amount spent by the Costellos at your establishment?

Mr. Fennelly: Just a minute. I object to the form of the question. It does not appear at all that these Costellos—

Mr. Christy: I believe the witness has testified that the Costellos carried in this book lived at 115 Central Park West, your Honor.

The Court: Yes, sir. I think that is not quite the point of Mr. Fennelly's objection. You said "Costellos," plural, and he would argue that there is no proof that more than one of them used it, but the objection is overruled, and you may go ahead with the inquiry.

Q. Does the computation show, Mr. Renard, that in the year 1947 the amount of $275.35 was spent? A. That is correct.

Q. And in the year 1948, $473.75? A. Correct.

Q. I believe your said a few minutes ago, Mr. Renard, that the cashbook for the year 1949 had been destroyed. Can you tell me if the bills which your rendered were paid by Mrs. Costello by check? A. They were.

Q. And were they paid—

The Court: That is, for those items concerning which you have already testified?

(1390) The Witness: Yes. They go—

Mr. Christy: No; I would like to question just a little further.

The Court: All right.

Q. In 1949 you still carried an account for Mrs. Costello; is that correct? A. On and off.

The Court: Keep your voice up, sir. I didn't hear you.

The Witness: I said on and off, yes.

Q. But she was a customer of yours during the year 1949 and you rendered her bills in 1949? A. Right.

Q. Were you paid by check occasionally in 1949? A. I was paid by check always.

Q. I show you Government's Exhibit 54 in evidence and ask you if each of those checks in that exhibit is payable to your establishment and if each one of them is dated in the year 1949? A. That is correct.

Q. Would you speak up, Mr. Renard? A. Yes, that is correct.

Q. And did you receive the originals of these checks, Government's Exhibit 54 in evidence, in payment for services rendered by your firm to Mrs. Costello? A. That is right. Yes, that is right.

(1391) Mr. Christy: No further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the—

The Court: Are you going to have those checks marked for identification?

Mr. Christy: Your Honor, these checks are already in evidence.

The Court: Oh, they are already in?

Mr. Christy: Yes. They are Government's Exhibit 54 in evidence.

The Court: All right. The point is, if you refer to them by the exhibit number then we are able to follow you. It is all right.

Mr. Christy: I thought I did, your Honor. I am sorry.

The Court: Maybe you did and maybe I missed you. All right.

By Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. I don't understand that question.

The Court: Have you testified before another body here, a body of men and women—

The Witness: No, I have never testified.

(1392) The Court: —concerning these facts that you testified to today?

The Witness: No, I have not.

Q. And, in addition to being your customer in 1949, Mrs. Costello was your customer in 1947 and '8, wasn't she? A. That is right.

Q. And did she always pay you by check? A. Always, yes.

Mr. Christy: Your Honor, I have totalled Govern-

ment's Exhibit 54 which are these checks. May I state the total for the record?

The Court: You may.

Mr. Christy: The total of the checks on Government's Exhibit 54 in evidence is $437.90.

The Court: Very well.

Mr. Christy: Thank you, Mr. Renard.

(Witness excused.)

Mr. Christy: I have one short witness left, your Honor.

Mr. George Solotaire.

GEORGE SOLOTAIRE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Solotaire, where do you live? A. 270 (1393) Bronxville Road, Bronxville.

Q. Are you presently, or do you presently operate the Adelphi Theatre Ticket Service? A. Yes, sir.

Q. In 1949, Mr. Solotaire, did you work for the Acme Theatre Ticket Service? A. Yes, sir.

Q. While you were there, did you handle the sale of tickets to various customers of Acme Theatre Ticket Company? A. Yes, sir.

Q. In 1949, Mr. Solotaire, did you have occasion to sell, or did your firm have occasion to sell theatre tickets to Mr. Frank Costello? A. Yes, sir.

Q. Were you paid by check for these theatre ticket purchases? A. Yes, sir.

George Solotaire—for Government—Cross

Q. Mr. Solotaire, I show you Government's Exhibit No. 55 in evidence and I ask you if those three checks in that exhibit are payable to your order, signed by Frank Costello, and all in the year 1949? A. Yes, sir.

Q. And do those checks represent payment by Frank Costello to you for the sale of tickets, for the sale of theatre tickets to Frank Costello? A. Yes, sir.

The Court: Have you totalled the checks?

Mr. Christy: The total of the checks, your Honor, 1949, is $236.70.

The Court: Very well.

(1394) Mr. Christy: I have no further questions, your Honor.

The Court: Mr. Fennelly?

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Mr. Fennelly: Are those checks marked for identification?

Mr. Christy: They are in evidence, Mr. Fennelly. Government's Exhibit 55.

Mr. Fennelly: That is all.

Mr. Christy: No further questions, your Honor.

The Court: You may go.

The Witness: Thank you.

Mr. Christy: Thank you, Mr. Solotaire.

The Court: All right. Ladies and gentlemen, we will adjourn now until 10.30 tomorrow morning. In the meantime, remember the instructions, don't talk about the case among yourselves or with anybody else, and keep your minds completely open.

(Adjourned to April 29, 1954, at 10.30 a.m.)

Colloquy

(1395) New York, April 29, 1954,
10.30 a.m.

(Trial resumed.)

(Jury not present.)

The Clerk: If there are any witnesses present in the court room at this time they will please retire to the witness room.

The Court: Yes, sir?

Mr. Fennelly: Your Honor, in the World-Telegram of April 27, 1954, there appeared this news item referring to the testimony about the loans from Mr. Erickson to Mr. Costello, and also the settlement of the Rothstein matter for $5,000. Then the article goes on to say:

"Lloyd F. MacMahon, chief assistant United States Attorney, told reporters the $5,000 payment was made in settlement of loans of $25,000 and $10,000 by Rothstein to Costello in the 1920s."

Now, there is no such proof of the amount of the obligations or contended obligations of Mr. Costello to Mr. Rothstein, no evidence whatsoever. (1396) That is prejudicial because it is not before the jury that he ever borrowed that much money, nor the circumstances of these transactions with Mr. Rothstein in evidence before the jury.

I, therefore, move for a withdrawal of a juror and a mistrial.

May this be marked for identification?

The Court: Oh, sure, mark it for identification.

Colloquy

Do you desire an instruction to the jury about anything more than the Court has been giving concerning reading the public press.

Mr. Fennelly: Well, I would think they should be instructed not—

The Court: I beg your pardon?

Mr. Fennelly: I think they should be instructed not to take any cognizance of anything in the public press relating to the trial, it is solely evidence that is before them in this case and that the press at times state things that are not evidence.

The Court: I didn't hear you.

Mr. Fennelly: And that the press state things that are not in evidence and draw conclusions that are unwarranted from the facts.

The Court: I will give such an instruction. I will deny the motion for the withdrawal of a juror.

(1397) Mr. MacMahon: May I state on the record that I have been misquoted in the article in the World-Telegram?

The Court: I don't hear you.

Mr. MacMahon: I have been misquoted in the article in the World-Telegram. I simply referred them to judgments which were matters of public record, your Honor.

The Court: Very well.

(Marked Defendant's Exhibit XX for identification.)

The Court: Do you have any opinion as to when that instruction should be given? Do you desire that I give it immediately at the opening, when the jury comes in, Mr. Fennelly, or do you think it would be

appropriate and sufficient if it is given at the time I give the instructions before the luncheon recess and before the recess in the afternoon?

Mr. Fennelly: I would think that would be more appropriate, perhaps.

The Court: That would be my judgment, rather than to call it to their attention at this time.

Mr. Fennelly: So as not to highlight it.

The Court: That is what I have in mind. To do it now might draw undue attention to newspaper (1398) stories. If it is given in connection with the other instruction, I hope it is as effective as it can be and would not highlight the newspaper publicity.

Very well.

Mr. MacMahon: While we are on this subject, I received a telephone call the other day, after the New York Herald Tribune article, which Mr. Fennelly referred to the other morning, from the reporter for the New York Herald Tribune, who advised me that the headline on that article was written by someone, he didn't know who, at the copy desk, and that he had no control over it.

The Court: He had what?

Mr. MacMahon: He had no control over that headline. And he extended his apologies to me and stated to me that nothing I had said to him in any way gave him any basis for any such headline.

The figures that we have supplied to the press were at the request of the press, and nothing but the arithmetical totals of the expenditures that were proven from the witness stand and the exhibits in evidence, your Honor.

The Court: Very well.

(Jury in box.)

The Court: Good morning, ladies and gentlemen. (1399) All right, Mr. Christy.

Mr. Christy: The Government calls Miss Juliana Komar.

JULIANA KOMAR, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Miss Komar, will you keep your voice up just a little so that the last man in the jury box may hear you? A. Yes.

Q. Where do you live, Miss Komar? A. I live 100 West 59th Street.

Q. And are you a dressmaker? A. Yes, I am a dressmaker.

Q. And you have your own business? A. I have my own business.

Q. Miss Komar, when you make a dress for a customer you send them a bill, is that correct? A. Yes.

Q. And the bill is prepared in duplicate? A. Yes.

Q. With the original going to the customer and a carbon copy is retained by you? A. Yes.

Q. When payment of that bill is made do you also enter it in your check book? A. Yes.

(1400) Q. Miss Komar, have you ever made any clothes for Mrs. Costello of 115 Central Park West? A. Yes.

Q. Do you have the records relating to those orders? A. Yes.

Q. May I have them, please?

(Witness hands papers to Mr. Christy.)

(Marked Government's Exhibits 317, 317-A and 317-B for identification.)

Q. Miss Komar, I show you Government's Exhibit 317 for identification and I ask you if that is a duplicate bill for work you did for Mrs. Costello. A. Yes.

Q. And is it dated April, 1949? A. April 1, 1949.

Q. And I show you Government's Exhibit 317-A and 317-B and ask you if those are the check books of yours in which you entered the payments? A. Yes.

Q. And they contain entries for Mrs. Costello, is that correct? A. Yes.

Q. And the check books and the duplicate bill books are records kept by you in your business, are they not? A. Yes.

Mr. Christy: The Government offers Government's Exhibits 317, 317-A and 317-B for identification in evidence.

And may we substitute photostats?

(1401) The Court: You may.

Mr. Christy: On the check book may we substitute just the photostat of the pertinent page which shows the payment?

The Court: Oh, yes.

(A pause.)

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibits 317, 317-A and 317-B for identification received in evidence.)

Q. Miss Komar, I call your attention to Government's Exhibit 317-B in evidence and ask you if in April, 1949, this exhibit, your check book, shows payments for Mrs. Costello of $70, $15 and $35. A. Yes.

Q. I call your attention to Government's Exhibit 317-A in evidence, check book for September, 1949, and ask you if that shows a deposit or payment for Mrs. Costello for $220. A. Yes.

Q. The total of those figures is $340—$240; I beg your pardon—$340. Now, Government's Exhibit 317 in evidence is the duplicate bill, and that bill carries a figure of $331.50. A. Yes.

Q. Now, the additional 50 cents was paid to you by Mrs. Costello, according to your check book. Was (1402) that for alterations and some minor work? A. Some little adding to that dress, must be for some small trimming or something what we put in.

Q. So the total paid to you by Mrs. Costello in the year 1949 was $340. A. Yes.

Q. Was that paid in cash? A. Paid in cash.

The Court: Any further questions?

Mr. Christy: No further questions, your Honor.

The Court: Very well.

Cross Examination by Mr. Fennelly:

Q. It was paid to you at separate times, was it not? A. It has been on account first, that first payment, and second when we finished her garment; two times been paid, separate times.

Q. Did you testify before the Grand Jury that returned the indictment in this case? A. No.

Q. Where did you say your shop was? A. 54 West 57th Street.

Q. Does that include sales tax, your total figure? A. Yes, is the sales tax.

The Court: Any further questions?
Mr. Fennelly: No further questions.
The Court: Very well.
Mr. Christy: Thank you very much.

(1403) (Witness excused.)

Mr. Christy: The Government calls Mrs. Sally Barth.

SALLY BARTH, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mrs. Barth, where do you live? A. I live at 158 West Walnut Street of Long Beach.

Q. What is your occupation, Mrs. Barth? A. Saleswoman, furs.

Q. Have you ever sold any furs to Mrs. Costello of 115 Central Park West? A. I did.

Q. Do you keep records of these sales? A. I do.

Q. Have you those records with you, Mrs. Barth? A. I have.

Q. May I have them? A. (Witness hands.)

(Marked Government's Exhibits 318, 318-A and 318-B for identification.)

Mr. Christy: May the record note that Government's Exhibit 318 consists of 5 slips of paper.

Q. Mrs. Barth, I show you Government's Exhibit 318 for identification and I ask you if these are sales slips, duplicate sales slips for sales to Mrs. Costello. (1404) A. Right.

Q. Would you speak up just a little so the last man in the jury box can hear you? A. Yes.

Q. They are? A. They are.

Q. And is the date on the first one May 9th, 1941? A. Correct.

Q. And the date on the last one, February 17, 1942? A. Correct.

Q. And the first four sheets are all dated 1941, are they not? A. Correct.

Q. I show you Government's Exhibit 318-A for identification and I ask you if that is a storage receipt for Mrs. Costello. A. Correct.

Q. And Government's Exhibit 318-B for identification, if that is also a duplicate bill of a sale to Mrs. Costello dated July 1, 1942. A. Correct.

Q. Now, these duplicate bills and storage receipts are records kept by you in the regular course of your business, are they not? A. Right.

Q. That is the regular course of your business— A. That is right.

Q. —to keep these records, these duplicate sales bills. A. Right.

Mr. Christy: Your Honor, the Government offers Government's Exhibits 318, 318-A and B in evidence.

(1405) Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibits 318, 318-A and 318-B for identification received in evidence.)

Sally Barth—for Government—Cross

Q. Mrs. Barth, from Government's Exhibits 318 and 318-A and B in evidence, have you computed the total amounts that were paid in each of the two years? A. Yes.

Q. And was the figure in 1941 $620? A. Correct.

Q. And in 1942 $913? A. Correct.

Mr. Christy: May we substitute photostats, your Honor?

The Court: Yes, you may.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. I don't know what you mean by that.

Q. Did you ever testify about this same subject matter before any body of ladies and gentlemen like this? A. No.

Q. And on your bill of February 17, 1942, part of Exhibit 318, what is the amount of tax on that? A. Ten per cent tax.

(1406) Q. How much? A. I wouldn't know. It is included in the amount there. I guess it is $72. Correct?

Q. 72.20 it looks like. A. Yes, something like that.

The Court: Any further questions?

Mr. Fennelly: That is all.

The Court: Very well. You may step down.

The Witness: I may go?

Mr. Christy: Thank you very much, Mrs. Barth.

The Witness: Good day.

(Witness excused.)

Mr. Christy: The Government calls Morris Rabinowitz.

Morris Rabinowitz—for Government—Direct

MORRIS RABINOWITZ, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Rabinowitz, will you keep your voice up a little so the last man in the jury box may hear you?

Where do you live, Mr. Rabinowitz? A. 28 Sickle Street, New York City.

Q. Where are you employed? A. At present?

Q. Yes. A. The Donald Garage.

Q. Where is that? A. 329 East 48th Street.

(1407) Q. In 1948, Mr. Rabinowitz, did you operate the West 68th Street Garage? A. I did.

Q. Where was that located? A. 230 West 68th Street.

Q. Do you remember approximately when you began operating that garage? A. April 1, 1948.

Q. When did you sell out? A. December 1, 1948.

Q. Mr. Rabinowitz, do you remember, while you were operating that garage, if Mrs. Costello at 115 Central Park West stored a car with you? A. Yes.

Q. Do you remember what type of car, make of car? A. Yes.

Q. What was that? A. Cadillac.

Q. While you were operating that garage did you keep an account for each person who kept a car there? A. Yes.

Q. Did this record show the charges for the storage and for the services rendered by your garage? A. Yes.

Q. And you were familiar with those records? A. Yes.

(Marked Government's Exhibit 319 for identification.)

Q. Mr. Rabinowitz, I show you Government's Exhibit 319 for identification and I ask you if that is the book in

which you kept the accounts for the customers of the West 68th Street Garage. A. Yes, it is.

(1408) Q. What is the date on the first page there? A. April, 1948.

Q. Does the book run through November, 1948? A. Yes.

Q. Or through October, 1948? A. Yes, it does.

Q. Does it reflect an entry under the name Costello? A. It does.

Q. Was that Mrs. Costello who lived in 115 Central Park West? A. Yes.

Mr. Christy: Your Honor, the Government offers Exhibit 319, or only those pages in the book which reflect the entries for Costello.

The Court: All right. Will you indicate what pages they are?

Mr. Christy: Yes.

The Court: I assume they are numbered?

Mr. Christy: They are numbered, yes. They are marked.

The Court: I say will you indicate them for the record now?

Mr. Christy: Yes. The pages are 2, 5, 8, 11, 14 and 17.

The Court: I take it you are offering so much of each of those pages as contains any matter relating to transactions with Mrs. Costello?

(1409) Mr. Christy: That is correct, your Honor.

The Court: Very well. Those pages may be marked as a group 319-A.

(Marked Government's Exhibit 319-A for identification.)

Morris Rabinowitz—for Government—Cross

The Court: The book itself need not be marked in evidence. It may remain for identification.

Mr. Kennedy: I object to it as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibit 339-A for identification received in evidence.)

Q. Mr. Rabinowitz, have you a computation of the total charges paid to the West 65th Street Garage by Mrs. Costello for the period May through October, 1948? A. Yes, I have.

Q. Was that total paid by her in 1948 $345.52? A. What does it represent?

Q. No, was the figure $345.— A. Yes.

Q. And 52 cents? A. Yes.

Q. And that represents the storage charges and the services for gas and oil and anything else that she may have purchased. A. That is true.

Mr. Christy: No further questions.

(1410) *Cross Examination by Mr. Finnelly:*

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, I didn't.

Q. And the figure you gave us as the total, that includes whatever sales tax was charged, too, doesn't it? A. That is so.

Mr. Christy: Thank you, Mr. Rabinowitz.

The Witness: May I take this book?

The Court: Yes, you may take that.

(Witness excused.)

Mr. Christy: The Government calls Mr. Kocornik. Your Honor, may I say something first? This is Mr. Cohan. He is another witness. I guess they must have misunderstood me, but it is perfectly all right.

FRED M. COHAN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Cohan, where do you live? A. 171 West 79th Street.

Q. What is your business, sir? A. I am a news dealer.

Q. How long have you been in this business? A. All my life, practically.

(1411) Q. What does your business consist of? A. Delivering newspapers to apartment houses.

Q. You get the various metropolitan newspapers and they are delivered in the various apartment houses? A. That is right.

Q. Do you generally keep a ledger of the charges to the customers for whom you deliver newspapers? A. I do.

Q. And you send a bill at the end of each month? A. That is right.

Q. Will you keep your voice up just a little so the last man in the jury box can hear you?

Mr. Cohan, do you have any other records going back for the period prior to 1950? A. No, I do not.

Q. You have destroyed those? A. That is right.

Q. Mr. Cohan, did you ever deliver newspapers to Frank Costello at 115 Central Park West? A. Yes, I did.

Q. For how long a period have you been doing that? A. As long as he has lived at that address.

Q. Did you go deliver papers there from 1938 through 1949? A. Yes, I did.

Q. What papers did you deliver, sir? A. The Times in the morning, the Telegram and Journal (1412) in the afternoon, and the Journal American and Times on Sunday.

Q. Did you make these deliveries 12 months of the year? A. Yes, sir.

Q. And you rendered a bill to Frank Costello at the end of each month, is that correct? A. Yes, sir.

Q. Did he sometimes pay that bill by check? A. Yes, sir.

Q. Mr. Cohan, when you were delivering these papers in the years 1938 through 1949, you, of course, knew the price of the newspapers in each one of those years? A. Yes, I did.

Q. Now, taking the newsstand prices of these papers for the years 1938 through 1949 and adding to that any services which—any service charge which you made, have you computed how much would have been paid for newspapers to Frank Costello in the years 1938 through 1949?

Mr. Fennelly: I object to it.

A. Yes, I have.

Mr. Fennelly: Just a minute. I object to the form of the question.

The Court: Overruled.

Q. You charge a service fee for the delivery of the papers, is that correct? A. Yes, I do.

Q. How much does that amount to? (1413) A. Approximately 20 per cent.

Q. That is over and above the newsstand prices? A. That is right.

Q. Have you computed how much was paid in these years? A. Yes, I have.

Q. Will you tell us how much was paid in 1938? A. Yes—

Mr. Fennelly: Same objection.

The Court: I don't hear you.

Mr. Fennelly: Same objection. No foundation has been laid to show that he can compute it.

The Court: I don't hear you.

Mr. Fennelly: There is no foundation to show that he can compute it.

The Court: I don't agree with you. He testified he knows that he delivered the papers and he knows the prices in the various years and he knows what papers he delivered. The objection is overruled.

And you may give us the answer, if you have it.

A. For 1938 the amount paid was $46.20.

Q. $46.20? A. That is correct.

Q. And 1939? A. 1939 it was $52.32.

Q. And 1940? A. $52.32, the same.

Q. And in 1941? A. The same.

Q. Now, that would be $52.32? A. That is right.

(1414) Q. 1942? A. The same, $52.32.

Q. And 1943? A. $56.11.

Q. 1944? A. $63.42.

Q. And 1945? A. $66.16.

Q. 1946? A. $69.45.

Q. 1947? A. $70.12.

Q. 1948? A. $75.45.

Q. And in 1949? A. The same, $75.45.

Mr. Christy: No further questions, your Honor.

Fred M. Cohan—for Government—Cross

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, I did not.

Q. You were reading the figures from some sheet. Might I look at that? A. Yes (handing).

Mr. Fennelly: Would you mark this for identification, please?

Q. You were paid by check for the newspapers, were you not? A. Sometimes by check and sometimes by cash.

Q. And the checks were always the check of Mrs. Loretta Costello, were they not? A. I believe so.

Q. And when you were paid by cash Mrs. Costello paid you the cash, did she not? A. No, I believe the girl used to come up and pay it.

(1415) Q. You mean what girl? A. The girl that worked for them. I am not there very often when the bills were paid. I have an office in the store, and the gentleman that owns the store collects these bills for me when they are paid in cash; so I really couldn't say just who did come up with the money.

(Marked Defendant's Exhibit YY for identification.)

Q. And did I understand you to say that you delivered papers to their apartment for 12 months of the year? A. To the best of my knowledge, yes, the papers were very seldom ever discontinued, if at all, for a short space of time.

Q. That is true in the summertime? A. Yes, sir.

Q. Have you any knowledge of this, or are you just guessing about it? A. No, I am not guessing at all.

Q. You have no records? A. Not going back that far, no, sir.

Q. Now, let us take the first year 1938. Would you just take that as an example and tell me how you arrived at the computation of $46.20? A. Yes, sir. I arrived at those figures, Mr. Christy showed me letters which he had received from the attorneys for the various newspapers setting forth (1416) the dates on which the various prices were changed, as they have gone up a number of times in that period of time, and I compiled it from that and added on my service charge.

Q. How many papers did you count, for example, in 1938? What papers are these? A. Well, the Times in the morning.

Q. Yes? A. The Times and the American on Sunday.

Q. Yes? A. And the Telegram and the Journal in the afternoon.

Q. How many days a week did you count the Telegram and Journal in the afternoon? A. Six.

Mr. Fennelly: That is all.

Mr. Christy: I have no further questions. Thank you, Mr. Cohan.

(Witness excused.)

Mr. Christy: Would your Honor care to take the recess now? I don't think I can make my next witness in five minutes.

The Court: I will rely on your judgment. All right, we will take our recess now.

(Recess.)

Mr. Christy: The Government calls Harry Ackerman.

HARRY ACKERMAN, called as a witness on behalf (1417) of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Ackerman, where do you live? A. 67-10 Juno Street, Forest Hills.

Q. Are you the president of the Ackerman Shops? A. I am.

Q. Where is the Ackerman Shops? A. Located at 305 East 63rd Street, New York.

Q. How long have you been with the Ackerman Shops, sir? A. 1937.

Q. Will you tell us, briefly, what the Ackerman Shops do. A. Well, we manufacture draperies and furniture.

Q. Do you know if the Ackerman Shops has ever had any transactions with Mrs. Costello? A. We have.

Q. Do you have a record of those transactions? A. We do.

Q. May I have them, sir? A. (Witness hands.)

(Marked Government's Exhibit 320 for identification.)

Q. Mr. Ackerman, I show you Government's Exhibit 320 for identification and ask you if that is a ledger sheet kept by you for the account of Mrs. Frank Costello, 115 Central Park West. A. That is.

Q. Does it show charges in the year 1949? (1418) A. It does.

Q. And this ledger sheet is a record kept by you in the course of your business, is it not? A. That is right.

Q. It is the regular course of your business to keep such a record? A. Yes.

Harry Ackerman—for Government—Cross

Mr. Christy: The Government offers so much of Government's Exhibit 320 for identification as applies to the year 1949.

The Court: Very well.

Mr. Christy: May we substitute a photostat at a later date, your Honor?

The Court: You may.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibit 320 for identification received in evidence.)

Q. Mr. Ackerman, I show you Government's Exhibit 320 in evidence and ask you if the total charge, total payments in 1949 amount to $478.52. A. They do.

Q. Is that correct? A. That is correct.

Q. That was paid in the year 1949? A. '49.

Mr. Christy: No further questions, your Honor.

(1419) *Cross Examination by Mr. Fennelly:*

Q. Did you testify before the grand jury that returned the indictment in this case? A. I did not.

Q. And that bill was paid by Mrs. Costello? A. That is right.

Q. And she ordered the draperies? A. She did.

Mr. Christy: No further questions. May we substitute a photostat for this?

The Court: Surely.

Mr. Christy: We will return it to you.

The Witness: All right.

Albert M. Rady—for Government—Direct

(Witness excused.)

Mr. Christy: The Government calls Albert M. Rady.

ALBERT M. RADY, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Rady, where do you live? A. In East Rockaway, Long Island.

Q. Do you have a street address? A. Yes, 21 Newkirk Avenue.

Q. What is the business, sir? A. Retail florist.

Q. What is the name of the business? (1420) A. Annenberg & Erickson, Incorporated.

Q. How long have you been with Annenberg & Erickson? A. Since '46.

Q. Are you the president of Annenberg & Erickson? A. I am the treasurer.

Q. You are the treasurer? A. Treasurer.

Q. From whom did you buy the florist shop? A. From—

Mr. Fennelly: I object to it as immaterial.

The Court: Sustained.

Do you propose to show it was from the defendant or from his wife?

Mr. Christy: No, I don't, your Honor.

The Court: Very well.

Q. Mr. Rady, when you took over the business some of the employees that had been with Annenberg & Erick-

son remained with you, is that correct? A. That is correct.

Q. Among the employees that remained with you was there a Grace Takata? A. Yes.

Q. Do you remember approximately when she left? A. It was sometime in '47. I think the latter part of '47.

Q. In your business did you maintain a ledger sheet on which were recorded the payments by various customers? (1421) A. Yes.

Q. That ledger sheet is a record kept in the regular course of your business, is it not? A. That is correct.

Q. And it was the regular course of your business to keep such a record? A. That is right.

Q. Will you speak up just a little— A. Yes.

Q. —Mr. Rady, so the last member of the jury may hear you? A. Yes.

Q. Have you got a ledger sheet with you referring to the month of April, 1947? A. I have.

Q. May I have it, sir? A. Yes, sir (handing).

The Court: What month is that?

Mr. Christy: That is April, 1947.

(Marked Government's Exhibit 321 for identification.)

Q. Mr. Rady, I show you Government's Exhibit 321 for identification and ask you if that is a page from your cash receipts ledger. A. It is.

Q. On which is recorded payments? A. That is right.

Q. And it is for the month of April, 1947? A. Yes.

Q. Is there a name on there C. Frank? A. There is.

(1422) Q. And there is a payment after that name, isn't there? A. There is.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 321 for identification.

Mr. Fennelly: I object to it as incompetent, irrelevant and immaterial.

The Court: May I see it, please?

(Paper handed to the Court.)

The Court: Sustained.

Q. Mr. Rady, you don't know who C. Frank is, do you? A. I do not.

Q. In the operation of your business are accounts sometimes carried in names other than the purchaser of the flowers? A. It is possible, yes.

Q. If a person comes into your store and orders flowers and charges it to a certain name, you would write that on the sheet, would you? A. That is right, write the name they gave us.

Q. You wouldn't be particularly concerned with what name was given, would you? A. That is right.

Q. But you would carry it on your ledger sheets and accounts under that name? A. That is correct.

Q. And then—

The Court: Would that be true whether or not you were extending credit?

(1423) The Witness: No, it would not be. You see, in this particular case, your Honor, as Mr. Christy started to point out before—

The Court: Just a minute.

The Witness: I mean, I wanted—

The Court: Just a minute.

The Witness: I have to clarify it.

The Court: If you will take my advice, I have